

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 29, 2006 Session

THE EDUCATION RESOURCE INSTITUTE v. RACHEL MOSS, ET AL.

**Appeal from the Chancery Court for Davidson County
No. 04-1055-III Ellen Hobbs Lyle, Chancellor**

No. M2005-02378-COA-R3-CV - Filed July 26, 2006

This is a suit against Rachel Moss to collect on two student loans. After her father agreed to pay her college tuition, she entered Dartmouth College. In 1995 and 1996, Ms. Moss's father borrowed money for her tuition. Ms. Moss's father signed the student loan applications and notes and had someone else sign his daughter's name to them. Ms. Moss did not learn of the forgery until 2001. Ms. Moss's father defaulted on the loans and The Education Resource Institute, which was the guarantor and administrator of the student loans, sued both Ms. Moss and her father. The trial court awarded the Institute a default judgment against Ms. Moss's father and dismissed the claim against her. The Institute appealed the dismissal. After careful review, we affirm the judgment of the trial court, finding that Ms. Moss was not liable to the Institute based on its theories of ratification or unjust enrichment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;
Case Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR. and D. MICHAEL SWINEY, JJ., joined.

Kevin S. Key, Nashville, Tennessee, for Appellant The Education Resource Institute.

Harlan Dodson, Nashville, Tennessee, for Appellee Rachel Moss.

OPINION

I. Background

Dr. Joseph P. Moss promised his daughter, Rachel Moss, that he would pay all of her college expenses. Rachel Moss thereafter applied to and was accepted at Dartmouth College. In the summer of 1995, Dr. Moss borrowed \$28,588.42 to pay for his daughter's first year of tuition at Dartmouth.

For her second year at Dartmouth in 1996, Dr. Moss borrowed \$27,159 to pay tuition. Dr. Moss signed the 1995 and 1996 notes, but had someone forge his daughter's name to the student loan applications and the promissory notes in both years. Ms. Moss did not know her name had been forged until 2001 and believed her father was paying for her college education as he had promised. In 1998, Dr. Moss again borrowed money for the Dartmouth tuition, but this time both he and his daughter signed the student loan application and note. Dr. Moss defaulted on all the loans. Rachel Moss is paying the 1998 loan, but not the 1995 and 1996 loans.¹

The Institute, as guarantor and administrator of the 1995 and 1996 notes, sued Dr. Moss and Rachel Moss to collect on the loans in April of 2004. The Institute alleged that Ms. Moss ratified the forged notes by endorsing the back of the student loan checks. In the alternative, the Institute alleged it should recover from Ms. Moss under the doctrine of unjust enrichment or *quantum meruit*. Ms. Moss answered, denying liability because she did not sign the 1995 and 1996 notes. Dr. Moss did not file an answer.

Following a bench trial, the trial court made the following findings of fact:

- 1) Ms. Moss did not execute the 1995 and 1996 loan applications and notes;
- 2) Ms. Moss was not aware until 2001 that either the 1995 note or the 1996 note existed or that anyone asserted that she might have any liability upon either of these notes; and
- 3) Ms. Moss endorsed the 1996 loan check from the Institute made payable to Dartmouth College and Rachel R. Moss.

The record indicates that the 1995 loan check from the Institute had been misplaced and was not introduced into evidence.

Based on these findings of fact, the trial court made two conclusions of law. First, the trial court concluded that the fact that Ms. Moss endorsed the 1996 check from the Institute was insufficient to establish a contract by ratification because ratification requires the deliberate assent of the person to be charged with all facts necessary to form an opinion to grant such an assent. The trial court noted there was no proof that Ms. Moss ever saw the front of the 1996 check; there is nothing on the back of the check indicating that it represented loan proceeds; and that even if Ms. Moss had seen the front of the check, that was not inconsistent with her understanding that her father was paying for her education and would not alert her that it was the proceeds for a loan for which she might be responsible.

Second, the trial court concluded that there was no contract between Ms. Moss and the Institute and therefore no breach of that contract by Ms. Moss.

¹ Suit has not been filed on the 1998 loan and it is not an issue in this case. There is no indication that a student loan was taken out in 1997.

In a subsequent order, the trial court awarded the Institute a default judgment against Dr. Moss in the principal amount of \$56,315.03, interest in amount of \$9,379.42, and attorney fees in amount of \$11,825. The Institute appeals the trial court's dismissal of its claim against Rachel Moss.

II. Issue Presented

The issue in this appeal is whether Ms. Moss is liable on the notes to which her name was forged, based on either an unjust enrichment claim or a theory of ratification resulting from Ms. Moss's endorsement of the back of the loan proceeds check.

III. Standard of Review

In a non-jury case such as this one, we review the record *de novo* with a presumption of correctness as to the trial court's determination of facts, and we must honor those findings unless there is evidence which preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded to the trial court's factual findings. *Seals v. England/Corsair Upholstery Mfg. Co., Inc.*, 984 S.W.2d 912, 915 (Tenn. 1999). The trial court's conclusions of law are accorded no presumption of correctness. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

IV. Analysis

A. Unjust Enrichment

The Institute's action based upon implied contract is referenced by various names in the pleadings and other places in the record: quasi-contract, unjust enrichment, *quantum meruit*, and contract implied in law. The Supreme Court observed in *Paschall's, Inc. v. Dozier*, 407 S.W.2d 150, 154 (Tenn. 1966) that actions brought upon theories of unjust enrichment, quasi contract, contracts implied in law, and *quantum meruit* are essentially the same. These terms are used interchangeably to describe those implied obligations where, on the basis of justice and equity, the law will impose a contractual relationship between parties, regardless of their assent thereto. *Id.*; accord *Metropolitan Gov't of Nashville and Davidson Co. v. Cigna Healthcare of Tennessee, Inc.*, M2003-02700-COA-R3-CV, 2005 WL 3132354 at *3 (Tenn. Ct. App. M.S., Nov. 22, 2005).

Our Supreme Court has recently stated the elements required to establish a contract implied in law as follows:

A quantum meruit action is an equitable substitute for a contract claim pursuant to which a party may recover the reasonable value of goods and services provided to another if the following circumstances are shown:

- (1) There is no existing, enforceable contract between the parties covering the same subject matter;
- (2) The party seeking recovery proves that it provided valuable goods or services;
- (3) The party to be charged received the goods or services;
- (4) The circumstances indicate that the parties to the transaction should have reasonably understood that the person providing the goods or services expected to be compensated; and
- (5) The circumstances demonstrate that it would be unjust for a party to retain the goods or services without payment.

Doe v. HCA Health Services of Tennessee, Inc., 46 S.W.3d 191, 197-98 (Tenn. 2001)(citing *Swafford v. Harris*, 967 S.W.2d 319, 324 (Tenn. 1998)); *see also Paschall's*, 407 S.W.2d at 155; *Freeman Industries, LLC v. Eastman Chemical Co.*, 172 S.W.3d 512, 525 (Tenn. 2005); *Daugherty v. Sony Electronics*, No. E2004-02627-COA-R3-CV, 2006 WL 197090 at *6 (Tenn. Ct. App. E.S., Jan. 26, 2006); *Bennett v. Visa U.S.A., Inc.*, No. E2005-00659-COA-R9-CV, 2006 WL 770467 at *7 (Tenn. Ct. App. E.S., Mar. 27, 2006).

A party alleging unjust enrichment must prove all five of the above elements in order to recover. In the present case, the Institute did not prove element (4). The trial court found that Ms. Moss did not understand and should not have reasonably understood that the party providing the goods or services, the Institute, expected to be compensated, because, among other things, Ms. Moss was unaware that the transactions even existed until 2001. Ms. Moss testified that she was unaware that her father had applied for and taken out student loans for her college education in 1995 and 1996. Ms. Moss further stated that if not for Dr. Moss's assurances that he would pay for all her college expenses, she would have considered applying to public schools and for scholarships. Ms. Moss testified that "I had no reason to think that there was any other relationship or payment involved other than my father directly to Dartmouth...At the time in '96, I was still very sure that my father was paying for my education as he had told me he was."

The trial court specifically credited Ms. Moss's testimony, stating that "the Court found very genuine and believable her testimony about learning of the existence of the notes" and that "Ms. Moss credibly testified to this Court that she has no recollection of seeing the front of that [1996 student loan] check; even if she did, she didn't put together, didn't know the significance of signing it."

Our review of decisions that hinge upon witness credibility is guided by the recognition that the trial court is in a better position to judge the credibility of witnesses, and thus we give a trial court's credibility determinations significant deference:

The credibility of witnesses is a matter that is peculiarly within the province of the trial court. *See Bowman v. Bowman*, 836 S.W.2d 563, 567 (Tenn.Ct.App.1991). That court has a distinct advantage over us: it sees the witnesses *in person*. Unlike an appellate court--which is limited to a "cold" transcript of the evidence and exhibits--the trial court is in a position to observe the demeanor of the witnesses as they testify. This enables the trial court to make assessments regarding a witness's memory, accuracy, and, most importantly, a witness's truthfulness. The cases are legion that hold a trial court's determinations regarding witness credibility are entitled to great weight on appeal. *See, e.g., Massengale v. Massengale*, 915 S.W.2d 818, 819 (Tenn.Ct.App.1995). In the absence of unrefuted authentic documentary evidence reflecting otherwise, we are loathe to substitute our judgment for the trial court's findings with respect to the credibility of the witnesses.

Lockmiller v. Lockmiller, No. E2002-02586-COA-R3-CV, 2003 WL 23094418 at *4, 2003 Tenn. App. LEXIS 953 (Tenn. Ct. App. E.S., Dec. 30, 2003) (emphasis in original).

Pursuant to the above analysis, our review of the record persuades us that the evidence does not preponderate against the trial court's judgment that under these circumstances, a contract implied in law between Ms. Moss and the Institute, making Ms. Moss liable for the 1995 and 1996 student loan notes, should not be imposed in this case.

B. Ratification

The Institute's second argument is that the trial court erred in holding that Ms. Moss did not ratify the contract between the Institute and Dr. Moss by endorsing the back of the 1996 check. We disagree. Ratification requires full knowledge of the existence and nature of the contract as explained in the following excerpt:

The principle that underlies all the cases of ratification is that the party is bound by deliberate assent made with all the facts before him necessary to form an opinion. It is the same as making a new contract, and the same elements must enter into it - that is, the assent must be given with an understanding of the material facts necessary to an intelligent assent to its terms. Acts relied upon as a ratification of a contract must have been done with full knowledge of the existence and nature of the contract in question.

7 *TENNESSEE JURISPRUDENCE, Contracts*, §64 at p. 154 (2005) and cases therein cited; *State ex rel. Robertson v. Johnson County Bank*, 74 S.W.2d 1084, 1087-88 (Tenn. Ct. App. 1934). Based on Ms. Moss's testimony, which the trial court found to be credible, the trial court did not err in holding that she did not deliberately assent with full knowledge of the existence and nature of the contract at issue here. We affirm the trial court's judgment that Ms. Moss did not ratify the contract by endorsing the back of the 1996 student loan check.

V. Conclusion

For the aforementioned reasons, the judgment of the trial court is affirmed and the case remanded for collection of costs below. Costs on appeal are assessed to Appellant, The Education Resource Institute.

SHARON G. LEE, JUDGE